



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2010

Ms. Neera Chatterjee  
Office of General Counsel  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2010-14160

Dear Ms. Chatterjee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#393992 (University of Texas OGC #131084).

The University of Texas System (the "system") received a request for seven categories of information related to construction projects at the University of Texas at El Paso College of Health Sciences/School of Nursing. You state you do not maintain information responsive to categories one, five, six, or seven of the request.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. You also assert that the release of the submitted information may implicate the proprietary interests of a third party, JT Vaughn Construction Company ("Vaughn"). Accordingly, you state, and provide documentation showing, the system has notified Vaughn of the request and of the company's opportunity to submit arguments to this office as to why its information should be excepted from public disclosure. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

---

<sup>1</sup>In responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).

You state the majority of the responsive information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2010-09611 (2010). In that ruling, we held the system must release the reports and contracts we marked as subject to sections 552.022(a)(1) and 552.022(a)(3), must withhold the information we marked under section 552.101 in conjunction with the Medical Practice Act, and may withhold the remaining information under section 552.103 of the Government Code. You inform us that the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, the system may continue to rely on Open Records Letter No. 2010-09611 as a previous determination and withhold or release this information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We note the submitted information is subject to section 552.022 of the Government Code, which states in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of completed daily project reports completed by Vaughn for the system. Pursuant to section 552.022(a)(1) of the Government Code, completed reports are expressly public, unless they are excepted under section 552.108 of the Government Code or are expressly confidential under other law. Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not "other law" that makes information confidential for the purposes of section 552.022. Consequently, the submitted information may not be withheld under section 552.103 of the Government Code. Because third party interests can provide a compelling reason to withhold information, we will consider whether any of the information is confidential on that basis.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the

date of this decision, we have not received correspondence from Vaughn. Thus, Vaughn has not demonstrated that it has a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the system may not withhold the submitted information on the basis of any proprietary interests Vaughn may have in the information. As no exceptions to disclosure have been raised, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID#393992

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

J. T. Vaughn  
J. T. Vaughn Construction  
10355 Westpark Drive  
Houston, Texas 77042-5312  
(w/o enclosures)